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must obey the regulation, for the ticket was void on its face and the passenger should, in the exercise of reasonable care have noticed the mistake and have had it corrected. *Garrison v. United Railways Co.* (Md. 1903) 55 Atl. 371. Some jurisdictions hold, however, that even under such circumstances the regulation need not be obeyed. *R. R. v. Dougherty* (1890) 86 Ga. 744. In the first two cases it seems difficult on principle to justify any holding other than that the passenger should not be obliged to obey that alternative of the regulation which imposes a penalty, when the carrier has by the act of its agent made it impossible for him to comply with the other alternative of the regulation. Under such a state of facts the regulation as respects that particular passenger would be unreasonable and in determining his rights a regulation should, on principle, be held reasonable or unreasonable when considered in the light of a specific case rather than as detached from particular circumstances. And this is the rule in many jurisdictions. *R. R. v. Wilson* (Ind. 1903) 66 N. E. 950; *Hayter v. Traction Co.* (1901) 66 N. J. L. 575.

The cases which hold that the carrier is entitled to enforce its regulation, even though itself in fault, go on the theory that the contrary rule is impracticable and a direct invitation to fraud. A recent New York case rests its decision on this broad ground of policy. *Monnier v. N. Y. C. R. R.* (1903) 175 N. Y. 281. It may be objected that this rule, besides its weakness on principle, tends to make the carrier arbitrary in the enforcement of its regulations. Further, that though the passenger has an action if he is subjected to the penalty of the regulation through the carrier's fault, it is one that he would so rarely resort to that the carrier would usually actually profit by its own wrong. But the stronger considerations of policy seem to support the New York view. By the contrary rule the conductor would be obliged to take the passenger's word as to a mistake or run the risk of subjecting the carrier to the payment of substantial damages and this would open a large field for fraud. Again if the carrier has the right to enforce rigidly a regulation which only becomes unreasonable in an exceptional case larger facilities can be afforded to the public than would otherwise be possible. Finally it would seem for the best interests of the public that a rule easy of comprehension and application should be adopted and it is certainly for public comfort that a disputed point should be argued and decided in court and not by conductor and passenger in a crowded car.

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RIGHT OF SECOND MORTGAGEE TO MAINTAIN TROVER.—Upon default in payment of the sum secured, the title of the mortgagee of chattels becomes absolute in law and his right to possession perfect. Thereafter, the mortgagor, or anyone holding his title, has but an equitable right of redemption, *Brown v. Bement* (1811) 8 Johns. 96; *Judson v. Eaton* (1874) 58 N. Y. 664; *Kimball v. F. & M. Nat'l Bank* (1893) 138 N. Y. 500, which right can be enforced only

in equity. *Casserley v. Witherbee* (1890) 119 N. Y. 522. Here may be noticed also the familiar principle that the mortgagor, or his successor in interest, the second mortgagee, has the right, as a cestui, to look to the senior mortgagee, so situated, as a constructive trustee of any surplus,—clearly but a right in personam, cognizable only on the equitable side of the court. Without more, it should be perfectly obvious that the mere equitable title of the mortgagor, after default and possession under the first mortgage, is not sufficient to support an action at law for the conversion of the property. *Ring v. Neale* (1873) 114 Mass. 111. If there is no right to possession in the mortgagor after default it must follow that there can be none in the successor to his rights. Unless, then, he acquires some of the rights of the first mortgagee it would seem that the second mortgagee has no right to possession on which to base an action for conversion. *Rugg v. Barnes* (1849) 2 Cush. 591; *Clapp v. Glidden* (1855) 39 Me. 448. This principle has been recognized in New York. *Moore v. Prentiss Tool & Supply Co.* (1892) 133 N. Y. 144. Of course if the second mortgagee is actually in possession he may maintain trover against an officer who, before the title of the first mortgagee becomes absolute, attaches and sells the goods mortgaged, *Treat v. Gilmore* (1860) 49 Me. 34; *Gardner v. Morrison* (1847) 12 Ala. 547; the second mortgagee having the same rights that the mortgagor would have in a like case. The same rule has been properly applied where, after the law-day, the second mortgagee takes possession before the first. *While v. Webb* (1842) 15 Conn. 302.

The Appellate Division, First Department, of the New York Supreme Court has recently made a very questionable application of the foregoing principles. *Columbia Bank v. American Surety Co.* (N. Y. 1903) 84 App. Div. 487. After default the second mortgagee attempted to add to his rights by assuming to come into an anomalous joint possession with the first mortgagee who was already in possession. It was held that he could bring trover against the attaching creditor for whom the sheriff had acted in taking the property in attachment proceedings. As has been seen he had no right to possession on which to base his action. Nor would he seem to have acquired any de facto possession sufficient to rest it upon. He did not assume to come into a joint possession under a joint title with the other mortgagee nor did he attempt to acquire a possession adverse to that of the first mortgagee but instead seems to have recognized the rights of his senior. Nor did the first mortgagee do anything to divest himself of the possession he had already acquired. The sort of possession claimed by the second mortgagee seems, then, to be one not known to the law, certainly it is not such as has hitherto furnished the basis for an action of conversion. On the whole, it would seem that the correct way of working out the rights of the second mortgagee is by making the first mortgagee a constructive trustee of the residue after the satisfaction of his claim. The fact that the first mortgagee has already recovered a judgment in trover for the amount of his lien should

make no difference in the result, as that judgment has not been satisfied and the legal title has not passed to the converter ; but if it had passed, it would still be impressed with the trust in favor of the second mortgagee, whose action in personam would then be against the sheriff on the equity side of the court. The proper disposition of the case is suggested by LAUGHLIN, J., dissenting.

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IMPERFECT IDENTIFICATION OF VENDEE, INDORSEE OR CONSIGNEE. — There is in several branches of the law a situation created by fraud in which uncertainty exists as to whether an ostensible party to a transaction was intended to be such by the actor. When B, representing himself as C, obtains from A the sale of chattels, or the indorsement of a draft, or the shipment of goods by carrier, does he thereby get title, or become the indorsee, or the consignee so as to protect an innocent third party to whom he transfers the goods, or the bank that pays him the draft, or the carrier that delivers the goods to him? Each case supposed involves the analysis of intention with a view to determining substantially the same question, viz. what person has the actor singled out to receive the benefit of a legal disposition he has made or purported to make. Parity of reason dictates that there should be uniformity of decision upon the point in all three branches of the law. Where the transaction is inter præsentes and the impostor acts in his own right and not as agent for another it is almost universally held that he has succeeded in obtaining rights through the transaction under which innocent third parties will be protected. *Robertson v. Coleman* (1886) 141 Mass. 231., *Land Title and Trust Co. v. N. W. National Bank* (1900) 196 Pa. 230., *Dunbar v. Boston etc. R. R. Co.* (1876) 110 Mass. 26.; *Tollman v. American Nat. Bk.* (1901) 52 L. R. A. 877, contra. In such a situation it may fairly be argued that the vendee, payee, or consignee intended by the plaintiff, in any other than a highly metaphysical sense, was the person before him, objectively identified as such. By his actual physical presence B has substituted himself effectively for the abstract personality in A's mind.

When the party misrepresenting himself negotiates from a distance, however, a more intricate question is raised. If he communicates by letter in the name of an actual person known to the plaintiff, and the plaintiff, as a result sends a check, is the check intended for the known party or for the impostor who wrote the letter? This question was squarely before the Nebraska court in the recent case of *Hoffman v. American Exchange Bank* (1903) 96 N. W. 112. An executor making final distribution of an estate advertised for a certain legatee, C, of whose whereabouts he was ignorant, desiring to remit a balance due him. He had previously made two payments to C, one by mail and one in person. Receiving from an impostor a letter purporting to come from C, the plaintiff sent a draft indorsed specially to C, to the address given. The Court, improperly it seems, refused to allow him to recover from the bank